

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON
 PORTLAND DIVISION

JUDY ANN PLACENCIA,)
)
 Plaintiff,)
)
 v.)
)
 WORLD SAVINGS BANK, FSB, a/k/a)
 WELLS FARGO BANK, N.A., a/k/a)
 WACHOVIA MORTGAGE, A DIVISION)
 OF WELLS FARGO BANK, N.A.,)
 f/k/a WACHOVIA MORTGAGE, FSB,)
 f/k/a WORLD SAVINGS BANK FSB)
 Wells Fargo Bank is of)
 Address: Office of the Chief)
 Financial Officer Attn:)
 Howard Atkins, NFO (or)
 successor) 420 Montgomery)
 Street, 12th Floor, San)
 Francisco, CA 94101)
)
 Defendant.)
)

No. CV-10-1130-HU

FINDINGS & RECOMMENDATION

Judy Ann Placencia
 32620 S.W. Lake Point Court
 P.O. Box 4187
 Wilsonville, Oregon 97070

Plaintiff Pro Se

/ / /

1 - FINDINGS & RECOMMENDATION

1 Pilar C. French
Julie M. Engbloom
2 LANE POWELL PC
601 S.W. Second Avenue, Suite 2100
3 Portland, Oregon 97204-3158

4 Attorneys for Defendant

5 HUBEL, Magistrate Judge:

6 Pro se plaintiff Judy Ann Placencia brings this action against
7 defendant World Savings Bank, now Wells Fargo Bank, challenging the
8 non-judicial foreclosure of real property. Defendant removed the
9 action to this Court from Clackamas County Circuit Court on the
10 basis of diversity jurisdiction.

11 Plaintiff moves to remand the action back to Clackamas County
12 Circuit Court.¹ I recommend that the motion to remand be denied.

13 BACKGROUND

14 Plaintiff filed the action in state court on August 17, 2010.
15 Exh. 1 to Notice of Removal; Exh. 1 to Engbloom Declr. in Sup. of
16 Deft's Opp. to Remand Mtn (copy of civil docket sheet for state
17 court case, printed from CourtTrax website). According to
18 plaintiff, she mailed a copy of her Complaint to Wells Fargo Bank's
19 Chief Financial Officer Howard Atkins, in San Francisco, on August
20 17, 2010. Exh. B to Pltf's Affid. in Sup. of Mtn to Remand at p.
21 2. (Express Mail receipt showing "Date Accepted" as August 17,
22 2010). The Certificate of Service submitted by plaintiff suggests
23 that she mailed the Complaint on August 18, 2010, by United States

24
25 ¹ Defendant filed a motion to dismiss the case on September
26 24, 2010. Rather than filing a substantive response to that
27 motion, plaintiff filed this motion to remand. I determine that
28 the proper course is to resolve the motion to remand first, then
allow plaintiff additional time to file a response to the motion
to dismiss, followed by defendant's reply. This will be
addressed in a separate scheduling order.

1 Express Mail, and that another copy of the Complaint was sent by
2 first class return receipt requested Certified Mail. Id. at p. 1.
3 (Certificate of Service with date August 18, 2010, appearing in
4 blue).

5 Curiously, the copy of this Certificate of Service that Wells
6 Fargo received bears no sent date, in contrast to the copy
7 plaintiff submits in support of her motion which contains a
8 separate, additional signature next to an August 18, 2010 date,
9 both of which are in blue ink, a different color than the first
10 signature which is in black. Compare Exh. 3 to Engbloom Declr. at
11 p. 1 with Exh. B to Pltf's Affid. The two documents also vary in
12 that the first page of plaintiff's copy of the Certificate of
13 Service has a "Clackamas County Court" date-stamp, indicating
14 "Received August 18, 2010," while the copy received by Wells Fargo
15 and submitted in opposition to the motion to remand does not.
16 Compare Exh. 3 to Engbloom Declr. at p. 1 with Exh. B to Pltf's
17 Affid.

18 At oral argument, plaintiff explained that she mailed the
19 Certificate of Service appearing at page 1 of her Exhibit B on
20 August 17, 2010, but, when she went to file it with Clackamas
21 County on August 18, 2010, she was told she needed an "original,"
22 and she had only the copy of the undated document she had mailed,
23 and had signed in black ink, on August 17, 2010. Thus, she re-
24 signed, in blue ink, the copy she had with her, dated it August 18,
25 2010, and tendered it to Clackamas County. However, the Clackamas
26 County Circuit Court docket sheet shows no entry of any documents
27 being filed or received on August 18, 2010, indicating that that
28 Court did not enter this Certificate of Service on its docket.

1 Exh. 1 to Engbloom Declr.

2 The Certificate of Service at issue bears an Express Mail
3 tracking number of EH558905525US, and a Certified Mail tracking
4 number of 7009 3410 0000 9700 6354. Exh. B to Pltf's Affid. at p.
5 1. However, the postal service documents plaintiff submits on page
6 2 of her Exhibit B confirm only that something was sent to Atkins
7 via Express Mail, with no return receipt requested. Id. at p. 2.
8 The documents do not show a mailing done by Certified Mail. Id.

9 According to defendant, when the "Article Number" matching the
10 Express Mail tracking number recited by plaintiff in her
11 Certificate of Service, and shown on the postal service document on
12 page 2 of plaintiff's Exhibit B, is entered into the postal
13 service's tracking system on the postal service's website, it shows
14 that this Express Mail was delivered to Wells Fargo in San
15 Francisco on August 19, 2010. Karen Pettinger Declr. at ¶ 5; Exh.
16 2 to Pettinger Declr.

17 Plaintiff insists that defendant received the mailing on
18 August 18, 2010. In support, plaintiff relies on a document she
19 brought with her to oral argument, and subsequently submitted as
20 part of the record. Pltf's Nov. 29, 2010 Affid. of Evid [dkt #23].
21 Exhibit A to Plaintiff's November 29, 2010 Affidavit of Evidence is
22 a "track & confirm" sheet from the United States Postal Service
23 showing that the Express Mail package plaintiff mailed in Portland
24 on apparently August 17, 2010, arrived in San Francisco on August
25 18, 2010, with "notice left" on August 18, 2010 at 9:49 a.m., and
26 again at 10:55 a.m., and with delivery occurring on August 19,
27 2010, at 10:43 a.m. Exh. A to Pltf's Nov. 29, 2010 Affid. of Evid.

28 According to the Declaration of Kim Wu, Manager of the Office

1 of Consumer Affairs for the United States Postal Service in San
2 Francisco, the tracking information on the "track & confirm" sheet
3 shows that the package was mailed with an incorrect destination zip
4 code of 94101. Wu Declr. at ¶ 3; Exh. 1 to Wu Declr; see also Exh.
5 B to Pltf's Affid. at p. 2 (showing zip code of addressee as
6 94101). According to Wu, the correct zip code was 94104. Wu
7 Declr. at ¶ 3; Exh. 1 to Wu Declr; see also Pltf's Exh. B at p. 2
8 (showing return receipt received by plaintiff with zip code of
9 94101 crossed out and 94104 written instead); Exh. A to Pltf's Nov.
10 29, 2010 Affid of Evid. (showing item logged as "missent" on August
11 18, 2010, at 7:38 a.m.). Wu explains that a notice was left for
12 the recipient of the package that a package was available for pick
13 up at 10:55 a.m. on August 18, 2010, and the package was picked up
14 by the recipient at 10:43 a.m. on August 19, 2010. Id.

15 Another exhibit submitted by plaintiff shows that something
16 bearing an "Article Number" matching the Certified Mail tracking
17 number noted in plaintiff's Certificate of Service, was delivered
18 to Atkins's office in San Francisco on August 20, 2010. Exh. D to
19 Pltf's Affid. The exhibit shows the item was sent certified Mail.
20 Id.

21 Finally, an additional Certificate of Service signed by
22 plaintiff states that she delivered a copy of the Complaint to
23 someone named Natali Basargin at a branch office of defendant's in
24 Wilsonville, Oregon. Exh. C to Pltf's Affid. in Sup. of Mtn to
25 Remand; Exh. 4 to Engbloom Declr. It is signed by Janet Majhor and
26 is dated August 19, 2010. Id. It contains a notary stamp. Id.

27 On August 27, 2010, plaintiff filed this Certificate of
28 Service in Clackamas County Circuit Court. Exh. 4 to Engbloom

1 Declr. Based on this filing, the state court case docket shows
2 that Wells Fargo was served on August 19, 2010. Exh. 1 to Engbloom
3 Declr. at p. 2.

4 On September 1, 2010, Wells Fargo's registered agent,
5 Corporation Service Company, provided Wells Fargo with Notice of
6 Service of Process. Exh. 5 to Engbloom Declr. The notice
7 indicates that plaintiff served a summons and complaint on CSC on
8 August 31, 2010. Id.

9 Defendant removed the case from Clackamas County Circuit Court
10 on September 20, 2010. On that date, defendant sent a "Notice to
11 Adverse Party of Removal," along with attendant removal documents,
12 to plaintiff at the following address: 32620 S.W. Lake Point
13 Court, Wilsonville, Oregon 97070. Pettinger Declr. at ¶ 2.

14 Only one of the two certificates of service submitted by
15 plaintiff as exhibits in support of her motion to remand, bears an
16 address for plaintiff. Exh. B to Pltff's Affid. at p. 1. The
17 address shown is 32620 SW Lake Point Court, Wilsonville, Oregon
18 97070. Id. The summons issued to defendant contains the same
19 street address, but also lists "P.O. Box 4187" as part of the
20 address. Exh. 3 to Engbloom Declr. at p. 1. On the first page of
21 the Complaint filed in state court, plaintiff's name and address
22 appear in the upper left corner with the address bearing both the
23 street address and the post office box. Id. at p. 4. But, the
24 signature block at the end of the Complaint, contains only the
25 street address. Id. at p. 16.

26 On or about September 30, 2010, the postal service returned
27 defendant's removal papers to defendant's counsel's office as
28 "undeliverable." Pettinger Declr. at ¶ 3. Affixed to the front

1 cover of the envelope was a sticker placed by the postal service
2 which indicated "Forward Time Exp. Rtn. to Send." Id. at ¶ 3; Exh.
3 2 to Pettinger Declr. On or about September 30, 2010, defendant
4 re-sent the Notice and removal papers to plaintiff at the following
5 address: 32620 S.W. Lake Point Court, P.O. Box 4187, Wilsonville,
6 Oregon 97070. Id. at ¶ 4. This mailing has not been returned to
7 defendant's counsel. Id.

8 STANDARDS

9 Generally, "any civil action brought in a State court of which
10 the district courts of the United States have original
11 jurisdiction, may be removed by the defendant or the defendants, to
12 the district court of the United States for the district and
13 division embracing the place where such action is pending." 28
14 U.S.C. § 1441(a); Matheson v. Progressive Speciality Ins. Co., 319
15 F.3d 1089, 1090 (9th Cir. 2003) ("Any civil action may be removed
16 to federal district court so long as original jurisdiction would
17 lie in the court to which the case is removed").

18 "The burden of establishing federal jurisdiction is on the
19 party seeking removal, and the removal statute is strictly
20 construed against removal jurisdiction." Prize Frize, Inc. v.
21 Matrix (U.S.), Inc., 167 F.3d 1261, 1265 (9th Cir. 1999), overruled
22 on other grounds, Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676
23 (9th Cir. 2006).

24 Remand is governed by 28 U.S.C. § 1447(c) which provides, in
25 pertinent part, that

26 [a] motion to remand the case on the basis of any defect
27 other than lack of subject matter jurisdiction must be
28 made within 30 days after the filing of the notice of
removal under section 1446(a). If at any time before
final judgment it appears that the district court lacks

1 subject matter jurisdiction, the case shall be remanded.
 2 An order remanding the case may require payment of just
 3 costs and any actual expenses, including attorney fees,
 4 incurred as a result of the removal.

5 28 U.S.C. § 1447(c).

6 The defendant has the burden of showing that it has complied
 7 with the procedural requirements for removal. Schwartz v. FHP
 8 Int'l Corp., 947 F. Supp. 1354, 1360 (D. Ariz. 1996), overruled on
 9 other grounds, Murphy Bros. v. Michetti Pipe Stringing, Inc., 526
 10 U.S. 344 (1999).

11 DISCUSSION

12 I. Timing of Removal

13 Plaintiff first argues that the case must be remanded to state
 14 court because defendant did not remove the case within the allowed
 15 thirty days. I disagree.

16 The notice of removal of a civil action or proceeding
 17 shall be filed within thirty days after the receipt by
 18 the defendant, through service or otherwise, of a copy of
 19 the initial pleading setting forth the claim for relief
 20 upon which such action or proceeding is based, or within
 21 thirty days after the service of summons upon the
 22 defendant if such initial pleading has then been filed in
 23 court and is not required to be served on the defendant,
 24 whichever period is shorter.

25 28 U.S.C. § 1446(b). The thirty-day period is triggered by either
 26 the simultaneous service of the summons and complaint or the
 27 receipt of the complaint at some point after service of the
 28 summons. Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526
 U.S. 344, 347-48, 354 (1999). The removal clock does not start
 until a defendant receives formal service of the summons and
 complaint. Id. at 354.

Defendant makes a persuasive argument that plaintiff's
 attempted Express Mail service is invalid. Under the applicable

1 rules for service of a summons and complaint on a corporation,
2 primary service is effected by personal or office service on a
3 registered agent, officer, or director of the corporation, or by
4 personal service upon any clerk on duty in the office of a
5 registered agent. Or. R. Civ. P. 7D(3)(b)(i). While Atkins
6 appears to be an officer of the corporation, mailing the complaint
7 and summons to him was neither personal service, nor office service
8 as prescribed in the relevant rules. Or. R. Civ. P. 7D(2)(a),
9 7D(2)(c).

10 Alternatively, if a registered agent, officer, or director
11 cannot be found in the county where the action is filed, true
12 copies of the summons and complaint may be served by (1)
13 substituted service upon such registered agent, officer, or
14 director, or (2) personal service on any clerk or agent of the
15 corporation who may be found in the county where the action is
16 filed, or (3) mailing in the specified manner. Or. R. Civ. P.
17 7D(3)(b)(ii). Plaintiff's Express Mail package to Atkins was not
18 substituted service or personal service. Id.

19 The mailing rules in Rule 7D(3)(b)(ii)(C) allow service on the
20 corporation by mailing true copies of the summons and complaint, in
21 the manner specified by separate rule, "to the office of the
22 registered agent or to the last registered office of the
23 corporation, if any, as shown by the records on file in the office
24 of the Secretary of State," or, if the corporation is not
25 authorized to transact business in the state at the relevant time,
26 mailing may be to the principal office or place of business of the
27 corporation. Or. R. Civ. P. 7D(3)(b)(ii)(C). For either of these
28 options, the plaintiff is also required to send the complaint and

1 summons to "any address the use of which the plaintiff knows or has
2 reason to believe is most likely to result in actual notice[.]"

3 Id. Finally, service may also be made upon the Secretary of State
4 in the specified manner. Or. R. Civ. P. 7D(3)(b)(ii)(D).

5 Assuming plaintiff mailed the summons and Complaint to Atkins
6 on August 17, 2010, plaintiff's Express Mail service on Atkins in
7 the manner effected does not comply with Rule 7D(3)(b)(ii)(C).

8 There is no suggestion that defendant was not authorized to
9 transact business in Oregon at the time of the events upon which
10 plaintiff's action is based. Thus, under the rule, plaintiff was
11 required to serve the office of the registered agent or the office
12 of the last registered agent as shown in the Secretary of State's
13 records, as well as send a copy to "any address the use of which
14 the plaintiff knows or has reason to believe is most to result in
15 actual notice[.]"

16 Plaintiff may have mailed the summons and Complaint to "any
17 address the use of which" she knew or had reason to believe would
18 result in actual notice, but, she failed to also send the summons
19 and Complaint to defendant's registered agent or the last
20 registered agent shown in the Secretary of State's records. Thus,
21 regardless of when the summons and Complaint were mailed or
22 received, service via the Express Mail package to Atkins is
23 invalid. Thus, while the record indicates that defendant received
24 the package plaintiff mailed on August 19, 2010, even if service is
25 deemed complete on August 18, 2010, as insisted by plaintiff, it

1 was invalid under the applicable rules.²

2 Defendant concedes that the service on August 19, 2010, of the
3 summons and complaint to one of its branches, was valid. Or. R.
4 Civ. P. 7D(3)(b)(ii)(B). Thirty days from August 19, 2010, is
5 September 18, 2010, a Saturday, making the deadline for removal
6 Monday, September 20, 2010. Fed. R. Civ. P. 6(a)(1)(C) (if the
7 last day of a specified time period is a Saturday, Sunday, or legal
8 holiday, time period is extended to the next Monday). The case was
9 removed and filed in this Court on September 20, 2010, within the
10 thirty days allowed by section 1446(b). Plaintiff's motion to
11 remand based on an alleged untimely removal, should be denied.

12 II. Notice to Plaintiff

13 Alternatively, plaintiff argues that the removal was invalid
14 because defendant failed to obtain the consent of all adverse
15

16 ² Notably, even if the Express Mail service was otherwise
17 effective, the applicable rule provides that for the purposes of
18 computing deadlines when serving by mail, service is considered
complete

19 on the day the defendant . . . signs a receipt for the
20 mailing, or three days after the mailing if mailed to
21 an address within the state, or seven days after the
mailing if mailed to an address outside the state,
whichever comes first.

22 Or. R. Civ. P. 7D(2)(d)(ii). Although the package was received
23 in San Francisco on August 18, 2010, as indicated above, the
24 tracking record for the Express Mail package plaintiff sent to
Wells Fargo in San Francisco, shows that defendant received the
25 package on August 19, 2010. Pettinger Declr. at ¶ 5; Exh. 2 to
Pettinger Declr.; Exh. A to Pltff's Nov. 29, 2010 Affid. of Evid.;
26 Wu Declr. at ¶ 3; Exh. 1 to Wu Declr. Thus, even if the Express
Mail service complied with the service requirements and is
27 otherwise deemed valid, it was not effective until August 19,
28 2010.

1 parties. Under 28 U.S.C. § 1446(d), a defendant who has removed an
2 action from state court to federal court must "promptly" after the
3 filing of the Notice of Removal required under section 1446(a),
4 give written notice to all adverse parties and shall file a copy of
5 the notice with the clerk of the state court. 28 U.S.C. § 1446(d).
6 Plaintiff states that because she was never served with the Notice
7 of Removal, defendant's removal of this action is invalid.³

8 This Court maintains an electronic docketing system referred
9 to as "CM/ECF." Local Rule 100-4 requires lawyers admitted to the
10 bar of this Court to be registered users of the CM/ECF system, and
11 to maintain a current CM/ECF email account sufficient to receive
12 service of electronic filings and court notices.

13 Although CM/ECF requires many court documents to be filed
14 electronically, initiating case papers must be filed
15 conventionally. L.R. 100-5.⁴ The docket entry for the Notice of
16 Removal shows that the papers were conventionally filed because the
17 entry bears the initials "mkk" which are those of one of the
18 Court's Docket Clerks. Court filings electronically filed by
19 counsel bear the filer's name in parentheses at the end of the
20 docket entry.

21 Because the initiating case papers, e.g. the Notice of Removal
22 and its supporting documents, were conventionally filed, defense
23

24 ³ To the extent plaintiff's argument is premised on
25 defendant having obtained the "consent" of the adverse parties to
26 the removal, the argument is not supported by the plain language
27 of the statute. As indicated, the statute requires "prompt
28 notice" to the adverse parties, but not their consent.

⁴ Moreover, as a non-attorney pro se party, plaintiff is
exempt from the rule requiring electronic filing of documents.

1 counsel was required to perfect conventional service in any manner
2 permitted by the Federal Rules of Civil Procedure. L.R. 100-8(b).
3 Under Rule 5(b)(2)(C), governing service of pleadings and papers
4 other than the Complaint, mailing to the person's last known
5 address is sufficient.

6 Defendant's Certificate of Service appended to the Notice of
7 Removal indicates that on September 20, 2010, defendant mailed, via
8 first class mail, a copy of the Notice of Removal to plaintiff at
9 her street address of 32620 S.W. Lake Point Court in Wilsonville.
10 Notice of Removal (dkt #1) at p. 4. As recited above, this is the
11 address plaintiff used in the Express Mail Certificate of Service
12 and in the signature block of her Complaint. Although the summons
13 and the caption of the Complaint also listed a post office box,
14 that was in addition to this same street address.

15 Here, unbeknownst to defendant, the postal service's ability
16 to forward mail sent to the street address had expired and thus,
17 the mail was returned to defendant's counsel. The record shows
18 that defendant promptly re-sent the materials, within ten days of
19 the original mailing and on the very day it received the
20 undeliverable mail. This time, defendant included the post office
21 box with the street address. The second mailing has not been
22 returned as undeliverable.⁵

23 _____
24 ⁵ I note that this Court made the same error. The October
25 4, 2010 scheduling order setting oral argument on defendant's
26 motion to dismiss, was sent, by the Court, to plaintiff at her
27 street address (dkt #8 showing returned mail). It was returned
28 as undeliverable with the same comment that the time for
forwarding had expired. Id. A non-public docketed staff note
shows that the Court re-sent the scheduling order to plaintiff's
post office box on October 13, 2010.

1 In a 2007 case discussing a similar issue, I explained the
2 relevant law as follows:

3 The parties cite no relevant Ninth Circuit cases and
4 I have found none. Recent cases suggest that the court
5 should examine whether defendants made a good faith
6 effort to give notice and whether the plaintiff suffered
7 prejudice as a result of a failure of notice. For
8 example, in Titan Finishes Corp. v. Spectrum Sales Group,
9 452 F. Supp. 2d 692 (E.D. Mich. 2006), the court found
10 that the defendant complied with section 1446(d) when it
11 filed its notice of removal on May 19, 2006, sent
12 plaintiff's counsel an email and voice mail on May 22,
13 2006, and when plaintiff received written notice on May
14 23, 2006. Id. at 695-96.

15 The Titan court cited favorably from an earlier
16 Eastern District of Michigan case which denied the
17 plaintiff's motion to remand where the plaintiff received
18 oral notice 10 calendar days after the filing of the
19 notice of removal and written notice within 13 calendar
20 days. Id. (citing Alpena Power Co. v. Utility Workers
21 Un. of Am., Local 286, 674 F. Supp. 1286 (E.D. Mich.
22 1987)).

23 In a 2006 Ohio case, the court denied a motion to
24 remand when the defendants had mailed the notice of
25 removal to the plaintiff's attorney at the address listed
26 in the summons, which was different than the address
27 listed in the complaint. Alston v. Sofa Express, Inc.,
28 No. 2:06-cv-491, 2006 WL 3331685 (S.D. Ohio 2006). The
court rejected the plaintiff's argument for a strict
reading of the statute and instead followed authority
recognizing that when there is a good faith effort to
give notice and when the plaintiff suffers no prejudice
as a result of the failure to give notice, the
requirements of section 1446(d) are met. Id. at *2.

29 The court concluded that the defendants had made a
30 good faith effort to provide notice because although a
31 more careful review of the summons and complaint would
32 have revealed the conflicting addresses for plaintiff's
33 counsel, reliance on the summons accompanying the
34 complaint was not unreasonable. Id. at *3. Furthermore,
35 it was plaintiff who had provided the inconsistent
36 addresses. Additionally, as soon as the mistake was
37 discovered, necessary steps were taken to cure the
38 problem and provide the written notice required. Id.
The court observed that plaintiff's counsel filed a *pro*
hac vice motion just nine days after the notice of
removal was filed and only sixteen days after the
defendants were served with the summons and complaint.
Id.

1 Other courts have reached similar conclusions.
2 E.g., Arnold v. CSX Hotels, Inc., 212 F. Supp. 2d 634
3 (S.D. W. Va. 2002) (motion to remand denied when original
4 mailing of Notice of Removal to plaintiff's counsel was
5 inexplicably never delivered, but plaintiff's counsel
6 learned of removal seven days later when it received a
7 copy of defendant's answer showing the action was pending
8 in federal court and defendant's counsel promptly mailed
9 another copy of the notice of removal upon learning of
10 the problem), aff'd, 112 Fed. Appx. 890 (4th Cir. 2004);
11 Calderon v. Pathmark Stores, Inc., 101 F. Supp. 2d 246
12 (S.D.N.Y. 2000) (where the delay was relatively short and
13 no action was taken by the state court between the time
14 of removal and the giving of notice, the defect was
15 harmless and created no basis for remand).

16 Green v. Praxis Partners, LLC, No. CV-07-301-HU, Findings & Rec. at
17 pp. 7-8 (D. Or. May 11, 2007), adopted by Judge Brown (D. Or. July
18 2, 2007). I still find no applicable Ninth Circuit authority on
19 this issue, other than the general concept that "[t]he statutory
20 time limit for removal petitions is merely a formal and modal
21 requirement and is not jurisdictional." Fristoe v. Reynolds Metals
22 Co., 615 F.2d 1209, 1212 (9th Cir. 1980).

23 The facts in the instant case are remarkably similar to those
24 in the Alston case. Additionally, here, while plaintiff states
25 that she has never been served a "Notice of Removal," she filed her
26 first motion to remand on October 15, 2010, approximately two weeks
27 after the Notice of Removal and other removal documents, were sent
28 the second time. Moreover, three days before, on October 12, 2010,
29 plaintiff filed, in this Court, a memorandum opposing defendant's
30 motion to dismiss, showing that she was aware that the case was
31 pending here.

32 The facts establish that defendant made a good faith effort to
33 give notice to plaintiff. The facts further establish that
34 plaintiff has suffered no prejudice as a result of any delay in
35 receiving the Notice of Removal. Plaintiff's motion to remand

1 based on a delay in receiving notice should be denied.

2 CONCLUSION

3 Plaintiff's motion to remand [14] should be denied.

4 SCHEDULING ORDER

5 The Findings and Recommendation will be referred to a district
6 judge. Objections, if any, are due March 15, 2011. If no
7 objections are filed, then the Findings and Recommendation will go
8 under advisement on that date.

9 If objections are filed, then a response is due April 1, 2011.
10 When the response is due or filed, whichever date is earlier, the
11 Findings and Recommendation will go under advisement.

12 IT IS SO ORDERED.

13 Dated this 25th day of February, 2011.

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15
16 /s/ Dennis James Hubel
17 Dennis James Hubel
18 United States Magistrate Judge
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